Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Missoula Intercarrier Compensation Reform Plan	)	
	)	

REPLY COMMENTS OF THE NEW JERSEY BOARD OF PUBLIC UTILITIES

The New Jersey Board of Public Utilities (Board) submits the following reply comments in response to the Public Notice (Notice) released by the Federal Communications Commission (FCC or Commission) on July 25, 2006. In this Notice, the FCC requested comments on the Missoula Plan (Plan), an intercarrier compensation (ICC) reform plan filed by the National Association of Regulatory Utility Commissioners' (NARUC) Task Force on Intercarrier Compensation. As a preliminary matter, the Board would like to state clearly and succinctly that, although the Plan was filed by the NARUC Task Force on Intercarrier Compensation (NTFIC), the Plan is an industry drafted and industry sponsored proposal and is not a NARUC-endorsed nor NARUC consensus document or plan (as articulated in the cover letter attached to the Plan).

"NTFIC agreed to file this industry proposal. <u>However, neither individual NTFIC members, nor NARUC, have taken positions – pro</u>

or con – on this proposal. NARUC's last resolution (February 2005) on this topic suggests that any intercarrier compensation reform proposal that NARUC might ultimately endorse should adhere to the policy principles adopted on May 5, 2004, to the extent possible, and should seek support among all industry, consumer, and governmental stakeholders."

This Plan does not adhere to those policy principles and it does not have such broad support. Therefore, the Commission should not in any way associate the filing of this industry plan by the NTFIC to either NARUC or any member state. In fact, as described below, no state who filed comments in this matter, endorses the Plan as filed.

On October 25, 2006, the Board filed initial comments in this docket wherein we expressed our opposition to the Plan as proposed. As noted in our comments, the Board found that the Plan's proposal to shift two thirds of the costs of interconnection from carriers to consumers ($6 Billion) would further burden New Jersey ratepayers, by increasing our payments to the Federal Universal Service Fund by an inordinate amount. The Board, having reviewed the comments filed by other interested parties, herein reiterates our previous concerns regarding the Plan's harmful effects on New Jersey ratepayers, and reiterates our position that the Plan as filed should be rejected. Specifically, the result is the Plan shifts the burden from carriers to consumers, in particular low and middle-income, low-usage urban consumers and the Plan will further burden

New Jersey ratepayers by more than $300 million with little or no attendant benefits. This Plan is bad for consumers, and particularly low and middle-income consumers, who are the least able to afford the increased charges which are nothing more than additional subsidies. If the Missoula Plan is enacted, revenue from low and middle-income urban consumers would subsidize higher income consumers and their carriers in rural states. THE BOARD THEREFORE OPPOSES THE PLAN. The Board also joined with eight states from the Mid-Atlantic Conference of Regulatory Utilities Commissioners (MACRUC) in opposing the plan.

As noted in the briefing paper prepared by the National Regulatory Research Institute (NRRI), twenty five State public utility commissions (state commissions) filed comments, either individually or jointly, expressing concerns about the Missoula Plan.[1] The NRRI notes three common areas of concern, which are shared by the Board:

- "Almost all state commissions fear that local telephone service rate payers will bear a disproportionate burden from increases in Subscriber Line Charge (SLC) and the federal Universal Service Fund (USF), as well as from new contributions to the proposed Restructure Mechanism (RM) and the Early Adopter Fund (EAF). They state that the benefits of reduced access charges may be too little to offset the costs faced by local consumers or may not be passed through to consumers at all. State commissions also question the fairness and distribution of the RM and EAF."

- "Secondly, many states argue that the three-tier rate design is not based on carriers' costs, and it does not lead to a truly uniform intercarrier compensation rate structure."

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1 *A Summary of State Commissions' Comments on the Missoula Plan: Issues of Concern*, Jing Lui, M.A. & Lilia Perez-Chavolla, Ph.D., National Regulatory Research Institute (November 10, 2006).

- “Equally important, state commissions oppose provisions in the Plan that preempt states’ authority in reforming intrastate access charges and reciprocal compensation. They argue that states should have flexibility in implementing the Plan.”

With particular emphasis on the increases in the Federal Universal Service Fund, the NRRI study notes that it is estimated that the Plan would cause at least a $2.225 billion increase in the federal USF, including approximately $1.5 billion for the RM and $200 million for the EAF. This represents approximately a 32 percent increase in the current USF funding level, and would cause the USF to grow to over $9 billion. More importantly, because this increased contribution to the federal USF will ultimately be passed on to end users, the NRRI noted that USF Net Payer States, such as many MACRUC states, filed comments in opposition to the Plan.

As described in our initial comments, New Jersey contributed in excess of $170 million more in USF support than we received for the 2004 calendar year. Based on recently released statistics, while New Jersey has received an increase of $10 million in USF funds, our net payment has increased by $ 21 million to total approximately $191 million for 2005. The additional burden of this plan on our ratepayers is inappropriate.

In addition, the estimated $200 million Early Adopter Fund appears to have grown dramatically since the filing of the plan, just as our initial comments suggested. On January 30, 2007, 48 hours prior to the close of the reply comment period, an amendment to the plan, referred to as a proposed “Federal Benchmark Mechanism,” was filed with the FCC by the plan’s proponents and a small group of states who would appear to benefit from the Early Adopter Fund. The latest estimate in that proposal exceeds $800 million, which is more than 3½ times the size of the original Early Adopter Fund estimate.

Therefore our original concerns about this plan have increased dramatically. The Board is concerned that this new proposed Federal Benchmark Mechanism may find its way into the Missoula Plan without a thorough review. A preliminary, cursory review of the document indicates there is no justification for any of the calculations beginning with the so-called "High" and "Low Benchmark Target" rates as well as the state-by-state effects of the plan. The proposal appears to "reward" states with high local exchange rates (and penalize those states with low local exchange rates) with no regard to why or how those rates were established. No proof has been given to show that they are the result of lowered access charges or even higher costs.

The Board has not had an opportunity to fully review this new proposal and urges the FCC to reject this modification for the same reasons that the Missoula Plan should be rejected: <u>it inappropriately shifts the burden of intercarrier payments to end-users in net contributor states such as New Jersey</u>. At a minimum a separate, formal comment period should be established so that interested parties have an opportunity to comment on this large - - and growing - - addition to the plan.

The Board shares the concerns regarding the Missoula Plan with its fellow state commissions as well as numerous industry and consumer representatives and respectfully requests that the FCC reject the Missoula Plan in its present format.

Respectfully submitted,

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DATED: February 1, 2007

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